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January 29, 2016

The Honorable Shira A. Scheindlin
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, N.Y. 10007-1312

Re: *UMB Bank, N.A. v. Caesars Entertainment Corp.*, 15-cv-4634
*BOKF, N.A. v. Caesars Entertainment Corp.*, 15-cv-1561
*MeehanCombs Global Credit Opportunities Master Fund, LP, et al. v. Caesars Entertainment Corp. et al.*, 14-cv-07091

Dear Judge Scheindlin:

Plaintiffs in the above-captioned actions write in response to the January 27, 2016 letter of Caesars Entertainment Corporation ("CEC") [*UMB* ECF No. 85; *BOKF* No. 80; *MeehanCombs* ECF No. 94] (the "January 27 Letter") asking the Court for a pre-motion conference for leave to move on an expedited basis to strike Plaintiffs' expert rebuttal reports of Roberta S. Karmel and Michael W. Phillips.

Plaintiffs respectfully request that the Court deny CEC's request and instead require the parties to brief the issues raised by CEC as part of an orderly *Daubert* motion process. CEC and Plaintiffs have agreed in principle to a schedule whereby *Daubert* motions would be filed by February 22, 2016, and responses would be filed by March 1, 2016 (there would be no replies); the parties are currently in the process of preparing a stipulation and proposed Order to this effect to be filed shortly for the Court's review and approval.

Although now is not the time to address the substance of these or other *Daubert* challenges, the expert-rebuttal reports of Karmel and Phillips are properly "intended solely to contradict or rebut evidence on the same subject matter identified" by CEC as permitted by F.R.C.P. 26(a)(2)(D)(ii). The reports of CEC's proposed experts Gadsden and Grien both purport to interpret the language of the relevant indentures, particularly with regard to the guarantee release provisions. The term "wholly owned subsidiary" used in the guarantee release provision of the 2006 Indenture incorporates the definition provided by Rule 1-02(z) of SEC Regulation S-X (the "Regulation") and is included in Gadsden's report. (Gadsden Rpt. fn. 18). Gadsden purports to interpret the guarantee release provisions of all the relevant indentures to support his opinion that they exist "for the purpose of facilitating CEOC's financial reporting, and not for the purpose of providing credit support" (Gadsden Rpt. ¶ 43), a conclusion that is

echoed on similar grounds by Grien. (Grien Rpt. ¶ 43). Plaintiffs disagree with CEC's experts' conclusions and assert that Gadsden's and Grien's conclusions are based on, among other things, an incomplete consideration of the Regulation's definition. These conclusions, if left unchallenged, could ultimately confuse a jury if offered at trial. Under such circumstances, rebuttal reports are appropriate, and even necessary, to avoid incomplete and misleading expert testimony on this key topic.

CEC has not demonstrated how it would be prejudiced by briefing its objections to the Karmel and Philips reports as part of an overall *Daubert* briefing process, to be conducted after all proposed experts have been deposed. Depositions will enable the parties to know the full scope and substance of all proffered expert testimony and may materially affect the scope and substance of any *Daubert* challenges.

Accordingly, Plaintiffs respectfully request that the Court deny CEC's request for a pre-motion conference and expedited briefing on the issues identified above.

Respectfully,

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cc: All Counsel of Record (via CM/ECF)